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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Keith Preston Nance,

No. CV 13-0313-PHX-SMM (DKD)

10 Plaintiff,

11 vs.

O R D E R

12 Allen Miser, et al.,

13 Defendants.
14

15 The Court granted Defendants' summary judgment motion and entered judgment
16 against Plaintiff on September 22, 2014; Plaintiff filed a notice of appeal the following
17 week (Docs. 36-37, 38). Defendants filed their application for bill of costs on October 6,
18 2014 (Doc. 41). Plaintiff moves to postpone a decision on taxing costs because of the
19 appeal.

20 As explained in *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-1846, 2014 WL
21 4745933, at *4 (N.D. Cal. Sept. 19, 2014), pursuant to the Advisory Committee Notes for
22 Federal Rule of Civil Procedure 54(d), "If an appeal on the merits of the case is taken, the
23 court may rule on the claim for fees, may defer its ruling on the motion, or may deny the
24 motion without prejudice, directing under subdivision (d)(2)(B) a new period for filing
25 after the appeal has been resolved." Fed. R. Civ. P. 54(d) advisory committee notes on
26 1993 amendments. This Committee Note has consistently been applied to requests for
27 costs as well as claims for fees. See e.g., *Friends of Tahoe Forest Access v. U.S. Dep't of*
28 *Agric.*, No. 12-1876, 2014 WL 1575622, at *1 (E.D. Cal. Apr. 17, 2014) (exercising its

1 discretion and finding no basis to defer a decision on the bill of costs pending plaintiffs'
2 appeal); *Lasic v. Moreno*, No. 05-161, 2007 WL 4180655, at *1 (E.D. Cal. Nov. 21,
3 2007 (“The reasoning of the Advisory Committee’s note is applicable to a ruling on a bill
4 of costs.”); *accord Pixion Inc. v. PlaceWare Inc.*, No. 03-2909, 2005 WL 3955889, at *2
5 (N.D. Cal. May 26, 2005) (declining to grant a stay on the taxation of costs pending
6 appeal).

7 The Court, in its discretion, will deny Plaintiff's request to defer taxation of costs.
8 Defendants, as prevailing parties, have an interest in prompt payment of its costs and the
9 fact that Plaintiff has taken an appeal of this Court's decision does not lessen that interest.

10 **IT IS THEREFORE ORDERED** that Plaintiff's Motion to Postpone Bill of
11 Costs (Doc. 44) is **denied**.

DATED this 31st day of October, 2014.

Stephen M. Madenjian
Salem, N.H.

Stephen M. McNamee
Senior United States District Judge